

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF The City of Cincinnati**

These Comments are filed by The City of Cincinnati ("the City") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, The City of Cincinnati believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

The City of Cincinnati believes that current legislation affecting local franchises undermines our ability to ensure access to service for all citizens equitably, jeopardizes our information network that supports emergency responders, and eradicates local control of local rights-of-way.

The City of Cincinnati therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

**Cable Franchising in Our Community**

**Community Information**

The City of Cincinnati has a population of 331,285. Our franchised cable provider is Time Warner Cable ("TWC"). Our community has negotiated cable franchises since 1980.

**Our Current Franchise**

Our current franchise began on June 17, 1996 and expires on June 17, 2011. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a six-month window

beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider, Time Warner Cable.

Our franchise requires the cable operator to pay a franchise fee to the City of Cincinnati in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. These fees enable the City to maintain and upgrade communications systems, including public safety radio systems, and information services to benefit the entire community.

As part of our negotiation process with Time Warner Cable, the City ensures that public resources such as the public rights-of-way benefit all citizens. We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have four channels (or capacity) devoted to public access; two channels (or capacity) devoted to educational access; and one channel (or capacity) devoted to government access. "PEG" access provides a valuable resource of community information and governmental involvement. This government access channel is one of the primary ways that our citizens can observe their elected officials' meetings and get information on the issues that affect their lives.

Our franchise requires that the cable operator support our PEG channels through a .96/per subscriber pass-through fee for funding of Public and Education Access.

Importantly, because we negotiated locally with Time Warner Cable, we have an institutional network ("I-Net") that supports our first responders. The Institutional Network is being enhanced to be capable of receiving, processing and distributing a minimum of twelve 6-megahertz channels upstream and thirty-nine 6-megahertz channels downstream, using a frequency spectrum of 400 megahertz, to serve the locations listed in over 300 locations. Further, it is the responsibility of Time Warner Cable to perform maintenance and repair of the Institutional Network, saving the City's taxpayers. We use our I-Net facilities in the training and information-sharing for Police and Fire forces; (2) the communications among City and County legislative bodies i.e. City Council, County Commissioners, and Board of Elections; (3) communications among City and County government departments such as Health, Recreation, Water, and Sewer; (4) and coordination and training for public institutions such as schools, universities, hospitals and libraries. The City of Cincinnati has incorporated the I-NET service into our Homeland Security drills and exercises and our emergency response systems. Connecting this vast system of critical responders throughout the area from various disciplines and public institutions is an important part of effectively managing these kinds of situations.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. TWC shall, at a minimum, comply with the Customer Service Standards adopted June 29, 1993 by the City, as they now exist or may hereafter be modified or amended by mutual agreement. TWC agrees to automatically comply with any changes in the Customer Service Standards as a result of any action by the FCC.

Our franchise requires that the cable operator currently provide service to the entire community. Again, the City of Cincinnati believes that this locally negotiated and locally monitored provision is crucial as cable services become more competitive so that we can ensure fair access for all citizens.

Further, in order to ensure that our residents have access to current telecommunications technologies, our franchise provided that TWC was given three years to rebuild/upgrade the existing system and was given five years to replace the old converters.

TWC's promise to collect and pay the Public Access Payment may cease if the City grants any franchise to any other multi-channel, video-programming distributor which does not require such distributor to pay a franchise fee or Public Access Payment equivalent on a per subscriber basis to the fees required of TWC by this Agreement. This provision is key to ensuring competitive service delivery and public access for all citizens.

The cable franchise grants the cable operator access to the public rights-of-way and compatible easements for the purpose of providing cable television service. TWC also meets with appropriate representatives of City departments to coordinate its work on the system necessary to obtain all required permits and/or approvals. Permit fees are paid by the franchise, and TWC is responsible for any expenses to repair damages to City property. The City of Cincinnati believes that access to the public rights-of-way should remain under the purview of the city government and negotiations for its use should also remain the responsibility of the people's local government.

The franchise agreement provides provisions for liquidated damages as enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement.. Damages are chargeable to the required performance bond for violation of any provisions of the franchise agreement. The City has access to all Company books of accounts and records and related supporting documentation for the purpose of ascertaining the correctness of any and all reports required by the franchise agreement. The franchise agreement also allows for special evaluation reviews to be held at any time during the term of the franchise at the request of the City or TWC.

### **Competitive Cable Systems**

The City has been approached several times by competitive video service providers. We have never denied any provider the opportunity to serve our community. The City of Cincinnati has mechanisms in place to offer the same or a comparable franchise to a competitor upon request. To date, no interested parties have chosen to enter into any formal discussions.

### **Conclusions**

The local cable franchising process functions well in The City of Cincinnati. As the above information indicates, we are experienced at working with cable providers to see that the

needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

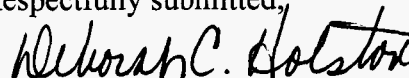
Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Fees collected by the City support critical services within the City.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Cincinnati therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,



The City of Cincinnati

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February 10, 2006

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